

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SAMUEL CALHOUN,

Plaintiff,

CASE No. 1:20-CV-697

v.

HON. ROBERT J. JONKER

CORIZON HEALTH, INC., et al.,

Defendants.

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Berens' Report and Recommendation in this matter (ECF No. 81) and Plaintiff's Objection to it. (ECF No. 82). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER & MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff's Objection. After its review, the Court finds that Magistrate Judge Berens' Report and Recommendation is factually sound and legally correct.

The Magistrate Judge recommends denying Plaintiff's motion for extension of time to file a notice of appeal (ECF No. 80) on the basis that Plaintiff had not even attempted to demonstrate the excusable neglect or good cause as required by rule. *See Fed. R. App. P. 4(a)(5)(A).* In his objections Plaintiff says he can demonstrate good cause for an extension because of the COVID-19 pandemic. He has lingering symptoms of a previous bout with the disease, he says, that have led to problems in concentration and memory. Beyond that, Plaintiff complains that the pandemic has led to logistical hurdles at the facility where he is presently incarcerated. The Court is not persuaded. For one thing, the arguments in Plaintiff's objections could have and should have been presented to the magistrate judge in the first instance. Beyond that, they do not rise to the excusable neglect and good cause the rule requires. Plaintiff has demonstrated repeatedly in this case that the issues he identifies have not hindered his ability and wherewithal to file in a timely way things that are much more detailed and involved than a notice of appeal.

CONCLUSION

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 81) is **APPROVED AND ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that Defendant's Motion for Extension of Time (ECF No. 80) is **DENIED**.

Dated: April 18, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE